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## THE PRINCEPS AND THE SENATORIAL PROVINCES

BY DONALD MCFAYDEN

Had the princeps under the Augustan constitution an *imperium maius* over the senatorial or "public provinces"? Modern historians almost without exception state that he had,<sup>1</sup> basing their statement on certain passages in Cassius Dio and Ulpian. Dio tells us that in 23 B.C., after Augustus had surrendered the consulship, the senate ἐν τῷ ὑπηκόῳ τὸ πλεῖον τῶν ἐκασταχόθι ἀρχόντων ἐπέτρεψεν;<sup>2</sup> and elsewhere he tells us that the emperor ἐντολὰς τέ τινας καὶ τοῖς ἐπιτρόποις (*procuratoribus*) καὶ τοῖς ἀνθυπάτοις (*proconsulibus*), τοῖς τε ἀντιστρατήγοις (*legatis pro praetore*) δίδωσιν, ὅπως ἐπὶ ῥητοῖς ἐξίωσι, and adds that this was already the custom under Augustus.<sup>3</sup> He further tells us that the proconsuls chose their legati subject to the princeps' approval.<sup>4</sup> These statements of Dio are apparently borne out by the remark of Ulpian that the proconsul *maius imperium in ea provincia habet omnibus post principem*.<sup>5</sup> It is argued that the story which Dio tells is entirely credible; that the later years

<sup>1</sup> E.g., Arnold, *Studies in Roman Imperialism*, pp. 27, 38; Boak, "The Extraordinary Commands from 80 to 48 B.C.," *American Historical Review*, XXIV (1918-19), 1-25; Bouché-Leclercq, *Manuel des institutions romaines*, p. 149; Bury, *Student's Roman Empire*, pp. 13, 28, 32, 38; Ferrero, *Greatness and Decline of Rome* (Eng. trans.), IV, 243; Gardthausen, *Augustus*, I, 528, 565, 729; Heitland, *Roman Republic*, III, 429; Hertzberg, *Geschichte des römischen Kaiserreichs*, pp. 13 f., 76; Herzog, *Geschichte und System der römischen Staatsverfassung*, pp. 137 f.; Kromayer, *Die rechtliche Begründung des Prinzipats*, pp. 49 f.; Mommsen, *Römisches Staatsrecht*, II<sup>3</sup>, 659-61; Pelham, *Essays in Roman History*, p. 71; Schiller, *Geschichte der römischen Kaiserzeit*, I, 153; Schultz, *Das Wesen des römischen Kaiserthums der ersten zwei Jahrhunderte*, pp. 26-28; *Vom Prinzipat zum Dominat*, p. 12; Shuckburgh, *Augustus*, pp. 148, 158; Willems, *Le droit public romain*, p. 418. Greenidge (*Roman Public Life*, p. 386), however, after citing the passages in Dio and Ulpian on which the ordinary view is based, cautiously remarks: "It is a passive rather than an active *maius imperium* that is here contemplated. The whole scheme of the provincial dyarchy rested on the assumption that there should be no relation between the proconsul and the princeps. . . . The statement that (the princeps) possessed *maius imperium* over (the senatorial) governors can only mean that in any collision of authority the princeps is not inferior to the proconsul."

<sup>2</sup> liii. 32. 5.

<sup>3</sup> liii. 15. 4.

<sup>4</sup> liii. 14. 7.

<sup>5</sup> Ulpian *apud Dig.* I. xvi. 8.

of the Republic furnished abundant precedents<sup>1</sup> for a decree such as Dio describes, and that grants of extraordinary proconsular powers were not infrequently made in favor of others than the princeps throughout the first century of the Empire,<sup>2</sup> at least one of which conferred upon the grantee a *maius imperium* over senatorial as well as over imperial provinces.<sup>3</sup> It is particularly insisted that unless such a decree had been passed, Augustus' surrender of the consulship would have cost him all hold upon the senatorial provinces.

Neither evidence nor a priori argument, however, is as weighty as at first appears.

As to the evidence, it is to be remembered that both Dio and Ulpian wrote under the Severi, when the Augustan principate was on the wane. By both of them the Empire is regarded as an absolute monarchy. Ulpian as praetorian prefect was a natural champion of the imperial prerogative; while Dio has been convicted in more than one instance of misunderstanding or possibly inventing senatorial decrees of the time of Julius Caesar or Augustus in his search for the origin of the privileges and powers possessed by the emperor in his own day.<sup>4</sup>

<sup>1</sup> These precedents may be found conveniently collected and discussed in the article by Boak cited in note 1.

<sup>2</sup> Mommsen, *Staatsrecht*, II<sup>3</sup>, 1151 ff.

<sup>3</sup> Tacitus *Ann.* ii. 43. 2.

<sup>4</sup> Thus: (1) In Dio's day the emperors exercised legislative powers through the device of issuing edicts or rescripts which gained permanent validity through the senate's oath to the emperor's *acta*. Dio sees in the legislation of Augustus in 19 B.C. the first instance of this practice and says that the practice was authorized at that time by senatorial decree (liv. 10. 6). The fact is that the *Leges Juliae* passed by Augustus in that and succeeding years were passed by him in the comitia by virtue of his tribunician powers (*Mon. Anc.*, chap. vi [Greek]), and that the custom for which Dio is seeking to account was a later growth. (2) The emperor in Dio's day was *legibus solutus*. Dio traces this privilege to a decree of the senate passed on the occasion of Augustus' return from Spain in 24 B.C. (liii. 28. 2). As Gardthausen (*Augustus*, I, p. 723) has pointed out, all that the senate did on that occasion was to grant Augustus a special dispensation from a single law. (3) The senatorial decree to which Dio traces the employment of the *praenomen imperatoris* by the emperors (xliii. 44. 2-5; cf. lii. 40. 2, 41. 3-4) is almost certainly apocryphal (McFayden, *History of the Title Imperator under the Roman Empire*, University of Chicago Press, 1920). (4) Dio says that Augustus was twice invested with the *cura morum* (liv. 10. 5, 30. 1), whereas we know from Augustus himself that that prerogative, though thrice offered, was never accepted (Mommsen, *Res gestae Divi Augusti*, 28-30). (5) Dio asserts that Augustus in 19 B.C. was granted the *consularis potestas* (liv. 10. 5), a statement which Mommsen (*Res gestae Divi Augusti*, 27; *Staatsrecht*, II<sup>3</sup>, p. 872, n. 2) has rightly branded as a fiction. (6) Dio traces the right of the emperor to accept *appellaciones* to a decree of the senate of the year 30 B.C. (li. 19. 7). The present writer hopes to show in a later paper that this right was a later extra-constitutional development.

The argument that but for the supposed decree Augustus would have lost control of the senatorial provinces by his surrender of the consulship derives its force from an erroneous conception of the nature of the principate. The princeps' power was neither created nor was it limited by law. Primarily, according to the Augustan theory, the princeps was the god-sent and god-endowed "chief citizen" of Rome. As such he was assigned all manner of difficult tasks, the administration of the unsettled and frontier provinces, for example. But his influence was not confined to those spheres of the administration which were legally assigned to him. It was paramount everywhere. Even within the city itself the magistrates were always ready to carry out his instructions, while the senate took no important step without consulting him. Hence no law was needed to insure Augustus' supremacy over the senatorial provinces. The subservience of the senate would of itself secure him full control; the proconsuls were quite ready to listen to his suggestions; while the provincials never were disposed to take seriously, indeed they seem never to have clearly understood, the legal limits of the princeps' authority. They insisted on regarding him as an absolute autocrat.<sup>1</sup> On the other hand, the acceptance by Augustus of a universal and permanent *maius imperium* in the senatorial provinces would have been ill advised. Had the princeps possessed permanent proconsular authority over the senatorial provinces, it is hard to see how the formal division of the provinces between the senate and the princeps would long have survived. The senate would then have had a legal right to call upon the princeps to take over the administration of these provinces in every emergency, and the provincials would have had an indefeasible right of appeal to him. These rights would have been only too eagerly grasped. Inevitably the emperor would have found himself becoming more and more the actual administrator of the "public" as well as of the Caesarian provinces, and the provincial dyarchy would rapidly have disappeared.

The rejection of the story in Dio is made easier by the fact that it is not difficult to surmise its origin. It is altogether probable that Augustus was granted about this time a *maius imperium* over Sicily

<sup>1</sup> McFayden, *History of the Title Emperor under the Roman Empire*, pp. 47-52.

and the senatorial provinces of the east. In 22 B.C. Augustus set out on his second eastern tour. On this tour he made many readjustments in various senatorial provinces, the legality of which it is hard to understand unless he was possessed of proconsular authority over them.<sup>1</sup> The probability is that Dio, as his manner was, misinterpreted this temporary grant of a *maius imperium* over certain provinces as a permanent grant covering all the "public" provinces.

The passages which we have thus far cited do not, of course, exhaust our information regarding the relation of the princeps to the senatorial provinces. When we turn to examine such other evidence as we possess, we note in the first place that Dio and Ulpian are the only two ancient authorities which attribute to the princeps a legal *imperium* over the senatorial provinces. There is no mention of any such prerogative of the princeps in the accounts given us by Strabo<sup>2</sup> or Suetonius<sup>3</sup> of Augustus' reorganization of the Empire, nor is there any reference to it in the *Monumentum Ancyranum*. Indeed the statement of Augustus,

potestatis autem nihilo amplius habui quam qui fuerunt mihi quoque in magistratu conlegae,<sup>4</sup>

would seem positively to exclude it, for in law the senatorial proconsuls were Augustus' colleagues. Tacitus seems to know nothing of it, otherwise it is hard to see how he could have represented Nero as promising:

teneret antiqua munera senatus, consulum tribunalibus Italia et publicae provinciae adsisterent; illi patrum aditum praeberent, se mandatis exercitibus consulturum.<sup>5</sup>

In fact all our sources, including Dio himself in other places,<sup>6</sup> stress Augustus' surrender of the peaceful provinces to the senate in a manner which is difficult to understand if he retained legal rights over them.

When we examine the concrete instances of the princeps' intervention in the affairs of the senatorial provinces recorded in our

<sup>1</sup> The material on this tour of Augustus may be found assembled in Gardthausen, *Augustus*, I, 806-33, and the corresponding portions of Vol. II.

<sup>2</sup> xvii. 3. 25.

<sup>3</sup> *Aug.* 47.

<sup>4</sup> Chap. 34.

<sup>5</sup> *Ann.* xiii. 4. 3. Other instances of Tacitus' ignorance are cited below.

<sup>6</sup> E.g., liii. 4. 3, 12. 1; lvi. 40. 2; lvii. 2. 4, etc.

sources, we find much that is hard to explain if we accept Dio's statement that he possessed an *imperium* over them, and little that cannot be satisfactorily explained if we reject it. In general our sources represent the "public" provinces as subject in law only to the proconsuls and the senate.

An incident which occurred just about the time that the decree to which Dio refers was passed casts light upon the previous situation. In 22 B.C., so Dio tells us,<sup>1</sup> M. Antonius Primus was brought to trial for having engaged in an aggressive war against the Odrysae when proconsul of Macedonia. His defense was at first that he had acted *τῇ τοῦ Ἀνγούστου γνώμῃ*; then that he had acted *τῇ τοῦ Μαρκελλοῦ γνώμῃ*. Augustus thereupon appeared before the court, without waiting to be summoned, and testified that he had given no such advice. This incident is instructive in two particulars. In the first place it is customary to say that down to the middle of 23 B.C. Augustus' possession of the consulship endowed him with the right to direct the administration of the provincial governors. In this instance, however, Primus apparently made no attempt to plead Augustus' *maius imperium*, although it is highly probable that the war which furnished the basis of his accusation was begun while Augustus was still consul. He plead only that he had acted on Augustus' *advice*; and implied that the advice of Marcellus, who was at most aedile at the time, would have been equally justifying. It is, indeed, questionable whether republican precedent would have justified Augustus in issuing a consular order in such a case. Theoretically, to be sure, a consul's authority extended over the whole Empire, and in comparison with that of a proconsul it constituted an *imperium maius*. But in practice the consul's authority came into action only when he was on the spot. Then, of course, he would take command; but we hear nothing of consuls sending orders to proconsuls from Rome. The proconsuls received their orders from the senate and reported to the senate. The second point of interest is that Augustus evidently took the ground that it would have been improper for him to interfere in the administration of a proconsul, even by offering a suggestion. Such at least is a natural inference from his volunteering his evidence. He doubtless felt that if a

<sup>1</sup> liv. 3. 2.

precedent were established of proconsuls coming to him for advice, the provincial dyarchy would soon have come to an end. His prompt disavowal on this occasion must be weighed when considering the probability that at this very time he took the senatorial provinces under his *imperium*.

There is much other incidental evidence that the senatorial provinces were not regarded under the early principate as subject to the princeps' authority. Under Augustus, for example, coins were issued in Asia stamped on one side with the name and symbolic head of the senate. Sometimes these coins bear on the other side the image and superscription of Augustus, but not always. Where these do appear, their presence can readily be explained by the prevalence of the Augustus cult in Asia. Proconsuls both of Asia and of Africa—and even, in one instance dating as late as 4 B.C., an African quaestor—are found issuing coins with their own heads and names and without any reference on them to Augustus.<sup>1</sup> These features of the early coinage are easily explicable if in law Augustus had no *imperium* in the senatorial provinces.

Of more weight is the evidence as to the relations of the earlier emperors to the African army. That until the time of Gaius the relation of the proconsul of Africa to this army was that of an *imperator* is common knowledge among historians. There is evidence, however, which is commonly overlooked and which goes to show that in law he was its only *imperator*, that it was not subject to the princeps' *maius imperium*. It is significant, for example, that while Augustus appropriated the imperial salutations accorded Tiberius, C. Caesar, and Germanicus—all of whom operated in Caesarian provinces—he does not seem to have appropriated the salutations accorded various African proconsuls in his reign;<sup>2</sup> neither did Tiberius appropriate the imperatorial salutation of Julius Blaesus.<sup>3</sup> The soldiers sent to dispatch Sempronius Gracchus, at the time an exile on an African island, received their orders from the proconsul

<sup>1</sup> Gardthausen, *Augustus*, I, 567 f.; II, 308, 12) and 13).

<sup>2</sup> See Mommsen, *Res gestae Divi Augusti*, pp. 14 ff.; *Acta triumphalia*; *CIL*, VIII, 16456; Vell. ii. 116. 2; Dio iv. 28. 4.

<sup>3</sup> At his accession Tiberius was already *Imp. VII*. He became *Imp. VIII* when saluted by the German army in 16 B.C. (Tac. *Ann.* ii. 18. 2), and continued to be so styled to the end of his life.

apparently, not from the princeps.<sup>1</sup> Finally, there are the following remarkable words of Tacitus:

Caesar post res a Blaeso gestas quasi nullis iam in Africa hostibus reportari nonam legionem iusserat, nec proconsule eius anni P. Dolabella retinere ausus erat, jussa principis magis quam incerta belli metuens.<sup>2</sup>

Tacitus clearly understands that Dolabella would have had the legal right to reject the princeps' demand, which he certainly would not have had if the princeps had possessed a *maius imperium* in Africa.<sup>3</sup>

That the senate, not the princeps, was legally the supreme authority over a senatorial province is illustrated by another narrative in Tacitus. At one stage in the war with Tacfarinas, so Tacitus tells us,

missis ad senatum litteris Tiberius motam rursum Africam incursu Tacfarinatis docuit, iudicioque patrum deligendum pro consule gnarum militiae, corpore validum et bello suffecturum. . . . Igitur . . . decretum ut Caesar legeret cui mandanda foret. Proxima senatus die Tiberius per litteras, castigatis oblique patribus quod cuncta curarum ad principem reicerent, M. Lepidum et Iulium Blaesum nominavit, ex quis pro consule Africae legeretur.<sup>4</sup>

It is to be noted that Tiberius does not intervene in the affairs of the province directly, as would have been his right had he possessed an *imperium* over it; but uses his right of *relatio* to call the attention of the senate to the situation. The senate, on the other hand, is obviously anxious to cast its responsibilities upon the emperor. Had the emperor had proconsular authority in Africa, this would have been easy. The senate would have had only to direct him to undertake the war himself. This recourse, however, seems not to have been thought of. Other instances of the senate acting as the supreme authority over the senatorial provinces will occur to the memory of

<sup>1</sup> Tac. *Ann.* i. 53. 9.

<sup>2</sup> Tac. *Ann.* iv. 23. 2.

<sup>3</sup> Another indication that the princeps was not regarded as possessing military *imperium* in senatorial provinces is the fact that apparently the military levies in such provinces were conducted by the proconsuls (Mommsen, *Staatsrecht*, II<sup>3</sup>, 850). If Mommsen is correct, P. Sulpicius Quirinus conducted a war in Cyrenaica under his own auspices in the reign of Augustus (*Res gestae Divi Augusti*, pp. 161-78).

<sup>4</sup> Tac. *Ann.* iii. 32. 1, 3; iii. 35. 1.



every reader of the *Annals*; and while it is true that there are numerous passages in our sources which represent the emperor as regulating the affairs of these provinces on his own authority, in many instances a comparison of parallel accounts in other authors makes it clear that the emperor acted through the senate.<sup>1</sup> This, we may believe, was regarded as the proper course.<sup>2</sup>

Nevertheless it was clear almost from the beginning that the senate's monopoly of power over the "public" provinces could not last. The senate had neither the force nor the spirit to resist the encroachments of the emperor. Indeed, it was only too eager to surrender its responsibilities to him, while the provincials were disposed to go behind its authority and to present their pleas to the real master of the world.

Direct intervention in the affairs of the senatorial provinces on the part of the princeps occurred even under the most constitutionally minded rulers. Tiberius, for example, gave advice to the proconsul of Africa at a critical stage of the war against Tacfarinas.<sup>3</sup> Tiberius also criticized another African proconsul for not conferring upon a soldier the civic crown, and then made good the omission himself.<sup>4</sup> This incident might justify the inference that Tiberius had an *imperium maius* in Africa, were it not for the weight of evidence on the other side. As it is, Tiberius' act must be explained in another way, as a slight and harmless usurpation of authority, an exercise by Tiberius of his *proconsulare imperium* outside his *provincia*.

Under tyrants like Gaius and Nero, it was natural that usurpations of power should take place that were neither slight nor harmless. Thus we find Gaius fetching noble youths from Asia to be exhibited at the games,<sup>5</sup> ordering famous statues to be brought to Rome from Greece,<sup>6</sup> and assassinating<sup>7</sup> or summoning to Rome for punishment<sup>8</sup>

<sup>1</sup> E.g., compare Dio liii. 14. 2 with Suet. *Aug.* 36; Dio lii. 42. 4 with Tac. *Ann.* xii. 23. 1; Suet. *Tib.* 37. 3 and Dio lvii. 24. 6 with Tac. *Ann.* iv. 36. 2-3 (note the context).

<sup>2</sup> Though, of course, a megalomaniac, such as Nero became in his later years, would naturally disregard it. Cf. the terms of his proclamation of freedom to the Greeks. *Bull. de corr. hell.*, XII (1888), 510.

<sup>3</sup> Tac. *Ann.* iii. 73. 4.

<sup>4</sup> Tac. *Ann.* iii. 21. 4.

<sup>5</sup> Suet. *Cal.* 58.

<sup>6</sup> Suet. *Cal.* 22. 2. These were afterward restored to their owners by Claudius (Dio lx. 6. 8).

<sup>7</sup> Suet. *Cal.* 57. 3.

<sup>8</sup> Dio lix. 29. 3.

a proconsul of Asia during his term of office. We find Nero also sending out agents to rob the temples of Greece and Asia of their chief ornaments,<sup>1</sup> and ordering all the historic games of Greece to be concentrated in the same year, in order that he might be able to contend at them all.<sup>2</sup> Such acts, of course, are to be classed as mere abuses of power. That Nero's robbery of the shrines of Asia was an illegality is shown by the fact that the proconsul of the province refused to interfere when the provincials mobbed Nero's agent.<sup>3</sup>

But the emperor might intervene in a senatorial province in various ways without any impropriety. Like any private citizen, he might make gifts to the states in the province. Augustus, for example, presented public works to Nemausus and Vienna in Narbonese Gaul even after making over that province to the senate.<sup>4</sup> Tiberius undertook to rebuild the temple of Venus at Mount Eryx.<sup>5</sup> Gaius<sup>6</sup> and Nero<sup>7</sup> both contemplated digging a canal through the Isthmus of Corinth. We find emperors making gifts of money to cities suffering from earthquake or other extraordinary calamity.<sup>8</sup> Under this head will come the construction of roads by the emperors in senatorial provinces.<sup>9</sup>

Furthermore, the emperor had estates in the senatorial provinces and the senatorial provinces owed certain contributions to the imperial *fiscus*. The management of these estates and the collection of these contributions necessitated the residence in these provinces of an imperial "agent" (*procurator*). Until the time of Claudius this agent had the legal status simply of a private person. He had to resort to the court of the proconsul to enforce the rights of his master.<sup>10</sup>

In this connection may be noted the preamble to a letter of Claudius correcting the abuses of the postal service, which was found at

<sup>1</sup> Tac. *Ann.* xv. 45. 1-4.

<sup>2</sup> Suet. *Nero* 23.

<sup>3</sup> Tac. *Ann.* xvi. 23. 1.

<sup>4</sup> *CIL*, XII, 3151, 5034c (p. 862).

<sup>5</sup> Tac. *Ann.* iv. 43. 6.

<sup>6</sup> Suet. *Cal.* 21.

<sup>7</sup> Suet. *Nero* 19. 2; Dio lxiii. 16.

<sup>8</sup> E.g., Suet. *Cal.* 21; Tac. *Ann.* ii. 47. 3; xvi. 13. 5; Dio liv. 23. 7.

<sup>9</sup> E.g., *CIL*, III, 346.

<sup>10</sup> Tac. *Ann.* iv. 15. 3; Dio lvii. 23. 4-5.

Tegea in Arcadia.<sup>1</sup> Mommsen refers to this inscription as proof that Claudius' proconsular authority extended over the senatorial province of Achaea.<sup>2</sup> But the post was an imperial service, and its regulation belonged to the emperor. We learn from the fragment itself that its exactions were felt even in Italy,<sup>3</sup> yet no one will maintain that Italy was subject to the emperor's proconsular authority.

We are on controversial ground when we come to consider the *cognitiones* held by the emperors from Augustus onward into cases arising out of the senatorial provinces. Considerable ingenuity has been expended in attempts to find the legal basis for the emperor's right of *cognitio* in general; but the present writer hopes to show in a later paper that the imperial *cognitio* was originally simply what the word implies, viz., an extra-legal *investigation* which the vast moral responsibility of the emperor compelled him to make before throwing his influence into one or the other scale of a disputed question. If this view be correct, the fact that we find the emperors from Augustus onward investigating problems arising in senatorial provinces cannot be used to prove that they possessed any legal authority over those provinces.<sup>4</sup>

Suetonius tells us that under Augustus, *regem Archelaum Trallianos et Thessalos varia quisque de causa Augusto cognoscente defendit* (sc. Tiberius).<sup>5</sup> In the case of Archelaus, king of Cappadocia, the competence of Augustus is clear enough; for the problem of his fate fell to Augustus to decide by virtue of the fact that Augustus was responsible for Syria, the province adjoining his kingdom. The case of Tralles is also simple. Tralles sent an embassy to Augustus in Spain in 26 or 25 B.C., asking relief from the consequences of an earthquake.<sup>6</sup> Tiberius was at the time serving with his stepfather in the army.<sup>7</sup> If, as is probable, this was the occasion of the *cognitio* referred to, it will be noted that the

<sup>1</sup> *CIL*, III, 7251.

<sup>2</sup> *Staatsrecht*, II<sup>3</sup>, 860, n. 2.

<sup>3</sup> Cf. also the coin of Nerva inscribed *vehiculazione Italica remissa* (Eckhel., VI, 408).

<sup>4</sup> So Greenidge, *Roman Public Life*, pp. 385 f.

<sup>5</sup> *Tib.* 8.

<sup>6</sup> For references, see Mommsen, *Res gestae Divi Augusti*, pp. 159 f.

<sup>7</sup> *Suet. Tib.* 9.

*cognitio* was not a judicial proceeding in any sense, but simply an inquiry into the city's need of the imperial generosity. The circumstances out of which the Thessalian *cognitio* arose cannot, apparently, be made out.

But the inscriptions furnish two instances of *cognitiones* under Augustus which, so far as their subject-matter is concerned, can only be regarded as judicial appeals.

In an inscription found at Cos<sup>1</sup> we have a part of what was evidently a letter addressed by a proconsul of Asia to the free city of Cos regarding a suit which a citizen of Cos had instituted before Augustus. The proconsul intimates that the suit ought to have been tried by him before being submitted to the emperor, and that in any case the deposit prescribed in his edict ought to have been made. The other inscription<sup>2</sup> is a copy of a letter of Augustus in 6 B.C. to the free city of Cnidus containing his findings in a case submitted to him by envoys sent by the city authorities. Augustus writes that he has had "Gallus Asinius, my friend" put the slaves of the accused to the question, and pronounces sentence on the basis of the evidence thus acquired. Asinius Gallus we know to have been proconsul of Asia at the time.

These inscriptions illustrate in the first place the willingness of the provincials to submit their cases to the emperor. Secondly, the excuse for submitting the case to the emperor was in each instance the same. Both Cos and Cnidus were free cities; and free cities were technically outside the jurisdiction of the governor of the provinces in which they were situated, although under the Republic this principle had been honored in the breach quite as much as in the observance. Finally, both inscriptions contain an intimation that the appeal to the emperor was irregular. In the first, the proconsul says in so many words that the case ought to have been tried by him before being referred to Augustus. This position he could hardly have taken if the princeps had had an *imperium* in the province; for the conception of an *imperium maius* was not that of an appellate jurisdiction, but rather that of a co-ordinate jurisdiction

<sup>1</sup> Paton and Hicks, *Inscriptions of Cos*, pp. 41-44.

<sup>2</sup> *Bull. de corr. hell.*, VII (1883), 62. It is given in full in Gardthausen, *Augustus*, II, 309, n. 17.

which when invoked took precedence over the *imperium minus*. The proconsul, it is true, admits by implication that after he has pronounced his decision the parties might appeal to the princeps. But that it would have taken considerable hardihood on his part to deny. If the princeps chose to investigate the case, who would dare to say him nay? In the second case, for example, Augustus does investigate the charge; but it is to be noted that what he does in effect is to refer it to the proconsul of Asia. He does not appoint an investigating commissioner of his own. So far as he can, without refusing to listen to the plaint of a city which in the imperial cult was taught to recognize him as its divine protector, he complies with the legal principle that the supreme judge in the province was the proconsul.

Under Claudius we have a couple of incidents which suggest how this custom of the emperor's investigating provincial problems for himself might easily give rise to a regular customary jurisdiction. Dio tells a story, which may be too good to be true, of how Claudius, who was a busybody and liked to examine cases for himself, once was hearing the complaints of the provincials of Bithynia against their governor. Unfortunately, when the complainants were called upon to speak, they all spoke at once, so that the old emperor could not understand. Accordingly he asked Narcissus to interpret, and that wily freedman, who was a friend of the accused governor, told the emperor that the provincials were cheering the latter. "Very well, then," said Claudius, "let him be governor for another year."<sup>1</sup> The story may be apocryphal; but it suggests the reflection that an appellate jurisdiction over the senatorial provinces might easily come into existence under an emperor willing to listen to the provincials' complaints.

The other story is less picturesque, though better attested. When the province of Cyrene was left by its last king to Rome, the royal estates passed to the Roman people. Under the careless rule of the dying Republic, the neighboring landowners encroached upon these estates. Hence under Claudius disputes arose as to the boundaries of the public and the private land, and Claudius sent out a commissioner to investigate the question. The commissioner dispossessed

<sup>1</sup> Dio lx. 33. 5.

many persons of land that they had held for generations; consequently under Claudius' successor he was prosecuted by the province for abuse of power. The senate refused to entertain the case on the ground that the accused had acted as a representative of the princeps and that the court had no means of knowing his instructions.<sup>1</sup> We have here Claudius delegating his power of *cognitio*. We have further the provincials protesting that Claudius' commissioner acted illegally, presumably because the princeps had no legal authority over Cyrenaica and therefore could delegate none. Finally, we find the senate practically taking the stand that an agent of the princeps is immune provided that he obeys his principal's instructions—in other words, that the emperor can do no wrong.

In the next to last year of Claudius' reign, the senate definitely sanctioned an invasion of the proconsul's rights which had become not uncommon in practice. In the year 53 A.D., according to Tacitus, *saepius audita vox principis parem vim rerum habendam a procuratoribus suis iudicatarum ac si ipse statuisset. Ac ne fortuito videretur, senatus quoque consulto cautum plenius quam antea et uberius.*<sup>2</sup>

The imperial *procuratores* had for some time<sup>3</sup> been exercising without right the summary powers characteristic of ancient tax-gatherers generally. Claudius maintains that his agents have as much right to hear and adjust complaints as he himself; and the senate, rather than have its authority over its provinces ignored, orders the *procuratores* to exercise the functions which they have been exercising illegally. Thereafter the imperial agents in the senatorial provinces possessed jurisdiction in cases related to the *fiscus*.<sup>4</sup> Yet as late as the day of Ulpian it was recognized that even such cases ought properly to come before the proconsul of the province, and that if he did not insist upon trying them it was only out of respect to the emperor. Ulpian clearly regards the procurator's jurisdiction as an intrusion, a view which hardly consists with the idea that the emperor whose delegate the procurator was had a *maius imperium* in the province.

<sup>1</sup> Tac. *Ann.* xiv. 18. 2-3.

<sup>2</sup> Tac. *Ann.* xii. 60. 1.

<sup>3</sup> Cf. Tac. *Ann.* iv. 15. 3.

<sup>4</sup> Ulpian *apud Dig.* I. xvi. 9; *nec quidquam est in provincia quod non per ipsum (sc. proconsulem) expediatur. Sane si fiscalis pecuniaria causa sit quae ad procuratorem principis respicit, melius fecerit si absteineat.*

Two letters of Vespasian are extant which illustrate ways in which the imperial authority over the senatorial provinces insensibly grew.

One is to the city of Sabora in Hispania Baetica. The authorities of Sabora had written, apparently, to Vespasian asking permission to style the new city, which they were building in the plain, *Flavia*; and requesting that it be permitted to enjoy the revenues granted by Augustus to the old city on the hill, together with certain new ones. Vespasian in his extant reply accepts the dedication of the new city to himself and confirms the grant of revenues made by Augustus, but adds: *si qua nova (sc., vectigalia) adicere voltis, de his procos. adire debebitis; ego enim nullo respondente constituere nil possum*.<sup>1</sup>

In this letter we see the imperial prerogative growing in three respects: It might seem that Vespasian was well within his rights in consenting that a city should call itself by his name; but under Augustus it was the senate which issued permission to cities to call themselves *Augusta*.<sup>2</sup> Secondly, we find the city appealing to Vespasian, not to the senate, for a confirmation of the privileges granted it by Augustus. It is not difficult to see how this error on their part could arise. The charter of Sabora had undoubtedly been drawn up by Augustus while in Spain. The town records would show that its provisions had been fixed by him; but they almost certainly would contain no mention of the subsequent senatorial decree confirming Augustus' acts in Gaul and Spain *en bloc*,<sup>3</sup> on which the validity of the charter technically depended. The noteworthy thing is that Vespasian himself apparently ignores that decree also, and assumes that he has the right to regrant what his predecessor had granted. Thirdly, he does homage to constitutional rights by referring the citizens of Sabora to the proconsul if they wished any extension of their revenues; but at the same time he practically promises that in case they and the proconsul fail to agree, he will investigate the matter himself. The proper authority to grant any extension of revenues and to hear appeals from the proconsul of senatorial province was, of course, not the princeps but the senate.

<sup>1</sup> *CIL*, II, 1423.

<sup>2</sup> Dio liv. 23. 7-8.

<sup>3</sup> Dio liii. 28. 1.

The other letter is one addressed by Vespasian to the township of the Venacini in Corsica.<sup>1</sup> In it we again find Vespasian confirming privileges granted by Augustus. We also find him instructing his procurator in the province to decide a dispute which had arisen between the Venacini and the town of Mariana regarding the bounds of certain lands which the former had purchased from the imperial domain. In this procedure the principle is discernible that any case involving imperial rights, however remotely, had better be referred to the emperor.<sup>2</sup>

By the beginning of the second century of our era, the relations of the emperor to the senatorial provinces had become increasingly intimate, and the independence of the proconsuls had been correspondingly undermined. Their military authority was now completely gone. The abstraction of the African legion from the command of the proconsul of Africa had left the princeps the only *imperator* in the Roman world. Henceforth the phrase *provinciae inermes* comes to be synonymous with the phrase *provinciae publicae*, and the word *exercitus* a substitute for the words *provinciae Caesaris*. By Dio's time—we know not how much earlier—the non-military character of the proconsul's office was indicated by his dress. While the legates who governed the imperial provinces wore military uniform and were girt with a sword, the proconsuls were required to dress as civilians and were not allowed to wear a sword, the latter restriction being meant to indicate, according to Dio, that they lacked the power of military discipline.<sup>3</sup> Therefore on the rare occasions on which a senatorial province was a prey to armed disturbance, the authorities were helpless until chance or the emperor sent them an imperial force under an imperial officer.<sup>4</sup>

The judicial independence of the proconsuls was disappearing also, through the growth of the imperial *cognitiones*. These, however, infringed even more upon the power of the senate than they did upon that of the proconsuls. The willingness of the emperor to listen led

<sup>1</sup> *CIL*, X, 8038. It is not certain whether Corsica at this time was an imperial or a senatorial province.

<sup>2</sup> There are a number of enlightening letters from emperors to states in senatorial provinces in the last edition of Dittenberger, *Sylloge inscriptionum Graecarum*, Vol. III.

<sup>3</sup> Dio liii. 13. 3, 7.

<sup>4</sup> E.g., Tac. *Hist.* ii. 8-9; iii. 47-48.



the provincials to lay their problems and requests before him direct. In such a case the decision of the emperor would doubtless be communicated by him to the senate for its formal acceptance; but any independent consideration of the problem by the senate would in effect be estopped. That this was the usual procedure in Tacitus' time is suggested by his note of surprise that Tiberius should lay provincial problems before the senate for its serious discussion.<sup>1</sup> We can hardly imagine Vespasian allowing the senate any genuine freedom of decision; certainly not Domitian. In this, as in other respects, the Flavian era marked a distinct advance in the direction of absolute monarchy.

In the second century all these tendencies continued to work. Trajan sent an army into Cyrenaica to subdue Jewish insurgents there.<sup>2</sup> The erection of a regular imperial court of appeal under Hadrian must have encouraged the submission of cases from the senatorial provinces. The fact that Augustus during his eastern tour had established certain regulations for the municipalities of Bithynia leads Pliny to refer to Trajan a question as to their interpretation.<sup>3</sup> The similar activities of Augustus in Spain were doubtless the justification of Pius' assumption of the right to confirm a *collegium* in the town of Hispalis in Baetica.<sup>4</sup> The travels of Trajan and Hadrian in the provinces must have brought the emperor and the provincials closer together.<sup>5</sup> Perhaps the introduction of the title proconsul into the imperial style, which was an innovation of Trajan's, may have some significance in this connection.<sup>6</sup> Even more important and significant was another innovation of Trajan's. In the administration of the provincial cities inefficiency and corruption were all too common. Trajan therefore began the practice of appointing imperial *correctores* to oversee the conduct of the municipal officials. At first this form of intervention was confined to the

<sup>1</sup> *Ann.* iii. 60. 1.

<sup>2</sup> *Ep. ad Traj.* 79, 80.

<sup>3</sup> *Dio* lxviii. 32. 3.

<sup>4</sup> *CIL*, II, 1167.

<sup>5</sup> Thus we find Trajan granting to the city of Nicomedia the right to hold certain games (Mommsen, *Staatsrecht* II<sup>3</sup>, 860, n. 3), and Hadrian granting similar privileges to Athens (*Dio* lxix. 16). In the former instance, however, the act seems to have been formally confirmed by the senate.

<sup>6</sup> According to Greenidge, it "hints at the practical disappearance of the dual control abroad and suggests the all-embracing nature of the emperor's *imperium*" (*Roman Public Life*, p. 353).

free cities, which technically were not part of any province, but ere long it was extended to cities which were in the strict sense parts of senatorial provinces.<sup>1</sup>

Bearing all these tendencies in mind, and bearing in mind also the deliberate subjugation of the senate which characterized all but the last of the Severi, it is not surprising that Ulpian and Dio in the beginning of the third century should take for granted that the "public" provinces were under the emperor's authority, quite as much as the imperial provinces. Nevertheless the old tradition was long in dying out. As late as the reign of the emperor Tacitus it was recognized that the proper court of appeal from the senatorial proconsul was the senate, which by that time had come to be presided over by the city prefect;<sup>2</sup> and even under Diocletian the two great proconsuls of Asia and Africa were still exempt from the jurisdiction of the pretorian prefect.<sup>3</sup>

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<sup>1</sup> For this development see Mommsen, *Staatsrecht*, II<sup>2</sup>, 857 f., 861, nn. 2 and 3.

<sup>2</sup> *Vita Floriani* 5. 3, 6. 2 = *Vita Taciti* 18. 3, 19. 2.

<sup>3</sup> Mommsen, *Strafrecht*, p. 283.